

4921

2011-2012 Regular Sessions

I N S E N A T E

April 29, 2011

Introduced by Sens. SALAND, SKELOS, FLANAGAN, MAZIARZ, ALESI, BALL, BONACIC, DeFRANCISCO, FARLEY, FUSCHILLO, GOLDEN, GRIFFO, HANNON, JOHNSON, LANZA, LARKIN, LAVALLE, LIBOUS, LITTLE, MARCELLINO, MARTINS, McDONALD, NOZZOLIO, O'MARA, RANZENHOFER, RITCHIE, ROBACH, SEWARD, YOUNG, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting bullying on school property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. In recent years, New York has taken
2 steps to ensure that school pupils, teachers and other personnel are
3 provided with a safe and secure learning environment. However, egre-
4 gious incidents of bullying, both in person and through the use of tech-
5 nology, continue to plague all of our students. The legislature recog-
6 nizes that bullying manifests in many forms and for innumerable reasons.
7 The legislature finds it is vital to protect all students from acts of
8 bullying, therefore, this legislation expands upon the provisions of
9 chapter 482 of the laws of 2010.
10 While the physical wounds may heal, the effects of bullying can last a
11 lifetime. Therefore, the legislature finds that prohibiting bullying is
12 an appropriate means to enhance the safety of students in New York
13 state's public schools. Furthermore, in today's age of advanced technol-
14 ogy, twenty-four hour connectivity and social networking, students who
15 are subjected to acts of bullying have no reprieve. Taunts and acts of
16 bullying that begin in school follow students home every day, and have
17 lasting impacts on such students. Conversely, bullying through the use
18 of technology can begin away from school property, yet have devastating
19 effects on the student's ability to learn in a safe environment at
20 school. While bullying through the use of technology may occur away from
21 school property, it can create a hostile environment for the student at

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD03599-07-1

1 school and it can materially and substantially disrupt the educational
2 process. Therefore, to further ensure the safety of students and school
3 employees, it is the intent of the legislature to provide schools with
4 the tools to identify, prevent, and prohibit bullying against all
5 students, both conventional and cyber-bullying.

6 S 2. Short title. This act shall be known and may be cited as the "Law
7 to Encourage the Acceptance of All Differences (LEAD)".

8 S 3. Section 801-a of the education law, as amended by chapter 482 of
9 the laws of 2010, is amended to read as follows:

10 S 801-a. Instruction in civility, citizenship and character education.
11 The regents shall ensure that the course of instruction in grades
12 kindergarten through twelve includes a component on civility, citizen-
13 ship and character education. Such component shall instruct students on
14 the principles of honesty, tolerance, personal responsibility, respect
15 for others WITH AN EMPHASIS ON DISCOURAGING ACTS OF BULLYING AS DEFINED
16 IN SECTION TWELVE OF THIS CHAPTER, observance of laws and rules, courte-
17 sy, dignity and other traits which will enhance the quality of their
18 experiences in, and contributions to, the community. The regents shall
19 determine how to incorporate such component in existing curricula and
20 the commissioner shall promulgate any regulations needed to carry out
21 such determination of the regents. For the purposes of this section,
22 "tolerance," "respect for others" and "dignity" shall include awareness
23 and sensitivity to discrimination or harassment and civility [in the
24 relations of] TOWARD ALL STUDENTS, INCLUDING BUT NOT LIMITED TO, people
25 of different races, weights, national origins, ethnic groups, religions,
26 religious practices, mental or physical abilities, sexual orientations,
27 genders, and sexes.

28 S 4. Paragraph d of subdivision 2 of section 2801 of the education
29 law, as added by chapter 181 of the laws of 2000, is amended to read as
30 follows:

31 d. disciplinary measures to be taken in incidents involving the
32 possession or use of illegal substances or weapons, the use of physical
33 force, BULLYING, vandalism, violation of another student's civil rights
34 and threats of violence;

35 S 5. Subdivision 2 of section 2801 of the education law is amended by
36 adding a new paragraph f-1 to read as follows:

37 F-1. PROCEDURES BY WHICH ANY SCHOOL EMPLOYEE, HAVING REASONABLE CAUSE
38 TO SUSPECT THAT A STUDENT HAS BEEN THE VICTIM OF BULLYING OR HAS COMMIT-
39 TED AN ACT OF BULLYING AS DEFINED IN SECTION TWELVE OF THIS CHAPTER,
40 SHALL BE REQUIRED TO REPORT SUCH INCIDENT TO THE PRINCIPAL OR DESIGNEE
41 THEREOF. IF THE PRINCIPAL OR HIS OR HER DESIGNEE DETERMINES THAT THERE
42 IS A REASONABLE CAUSE TO BELIEVE THAT THE INCIDENT OCCURRED, HE OR SHE
43 SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT. ANY EMPLOYEE WHO
44 REASONABLY AND IN GOOD FAITH MAKES A REPORT OF AN ACT OF BULLYING TO THE
45 PRINCIPAL OR DESIGNEE THEREOF SHALL HAVE IMMUNITY FROM CIVIL LIABILITY
46 WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS;

47 S 6. Section 11 of the education law, as added by chapter 482 of the
48 laws of 2010, is amended to read as follows:

49 S 11. Definitions. For the purposes of this article, the following
50 terms shall have the following meanings:

51 1. "School property" shall [mean in or within any building, structure,
52 athletic playing field, playground, parking lot, or land contained with-
53 in the real property boundary line of a public elementary or secondary
54 school; or in or on a school bus, as defined in section one hundred
55 forty-two of the vehicle and traffic law.

1 2. "School function" shall mean a school-sponsored extra-curricular
2 event or activity] HAVE THE SAME MEANING AS SET FORTH IN SECTION TWEN-
3 TY-EIGHT HUNDRED ONE OF THIS CHAPTER.

4 [3.] 2. "Disability" shall mean disability as defined in subdivision
5 twenty-one of section two hundred ninety-two of the executive law.

6 [4. "Employee" shall mean employee as defined in subdivision three of
7 section eleven hundred twenty-five of this title.

8 5.] 3. "Sexual orientation" shall mean actual or perceived heterosexu-
9 ality, homosexuality or bisexuality.

10 [6.] 4. "Gender" shall mean actual or perceived sex and shall include
11 a person's gender identity or expression.

12 [7. "Harassment" shall mean the creation] 5. "CREATION of a hostile
13 environment [by]" SHALL MEAN ENGAGING IN conduct or [by] verbal threats,
14 intimidation or abuse that has or would have the effect of unreasonably
15 and substantially interfering with a student's educational performance,
16 opportunities or benefits, or mental, emotional or physical well-being;
17 or conduct, verbal threats, intimidation or abuse that reasonably causes
18 or would reasonably be expected to cause [a] ANY student to fear for his
19 or her physical safety[; such conduct, verbal threats, intimidation or
20 abuse includes but is not limited to conduct, verbal threats, intimid-
21 idation or abuse based on a person's actual or perceived race, color,
22 weight, national origin, ethnic group, religion, religious practice,
23 disability, sexual orientation, gender or sex].

24 6. "BULLYING" SHALL MEAN THE SEVERE OR REPEATED USE BY ONE OR MORE
25 STUDENTS OR SCHOOL EMPLOYEES OF A WRITTEN, VERBAL OR ELECTRONIC
26 EXPRESSION, OR A PHYSICAL ACT OR GESTURE, OR ANY COMBINATION THEREOF,
27 DIRECTED AT A STUDENT THAT HAS THE EFFECT OF: (I) CAUSING PHYSICAL INJU-
28 RY, SERIOUS PHYSICAL INJURY OR EMOTIONAL HARM TO THE STUDENT OR DAMAGE
29 TO THE STUDENT'S PROPERTY; (II) PLACING THE STUDENT IN REASONABLE FEAR
30 OF HARM TO HIMSELF OR HERSELF OR OF DAMAGE TO HIS OR HER PROPERTY; (III)
31 CREATING A HOSTILE ENVIRONMENT AT SCHOOL FOR THE STUDENT; OR (IV) MATE-
32 RIALY AND SUBSTANTIALLY DISRUPTING THE EDUCATIONAL PROCESS OR THE
33 ORDERLY OPERATION OF A SCHOOL. THE TERM BULLYING SHALL INCLUDE COMMUNI-
34 CATIONS OR DISSEMINATION OF ANY MATERIAL THROUGH WRITTEN, VERBAL OR
35 ELECTRONIC EXPRESSIONS WHICH CREATE A HOSTILE ENVIRONMENT AT SCHOOL OR
36 DISRUPT THE EDUCATIONAL PROCESS AS SET FORTH IN SUBPARAGRAPHS (III) AND
37 (IV) OF THIS PARAGRAPH, REGARDLESS OF WHETHER THE COMMUNICATION IS
38 INITIATED ON OR OFF SCHOOL PROPERTY. ACTS OF BULLYING SHALL INCLUDE,
39 BUT NOT BE LIMITED TO, THOSE ACTS WHICH ARE MOTIVATED BY A STUDENT'S
40 ACTUAL OR PERCEIVED RACE, COLOR, WEIGHT, NATIONAL ORIGIN, ETHNIC GROUP,
41 RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, OR
42 SEX.

43 S 7. Section 12 of the education law, as added by chapter 482 of the
44 laws of 2010, is amended to read as follows:

45 S 12. [Discrimination and harassment] BULLYING AND DISCRIMINATION
46 prohibited. 1. No student shall be subjected to [harassment] BULLYING by
47 employees or students on school property [or at a school function; nor
48 shall any].

49 A. NO STUDENT OR SCHOOL EMPLOYEE SHALL SUBJECT ANY STUDENT OF A PUBLIC
50 SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM TO BULLYING AS
51 DEFINED IN THIS ARTICLE.

52 B. ANY STUDENT OR SCHOOL EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVI-
53 SION TWO OF THIS SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL
54 BE SUBJECT TO DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE
55 OF CONDUCT ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS
56 ARTICLE AND THE APPLICABLE DISCIPLINE PROCEDURES. ANY STUDENT OR SCHOOL

1 EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN
2 A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE SUBJECT TO DISCI-
3 PLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM GOVERNING
4 CONDUCT.

5 C. NOTHING IN THIS SECTION SHALL APPLY, OR BE CONSTRUED TO APPLY, TO
6 PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS. NOR SHALL
7 THIS SECTION PRECLUDE OR LIMIT, OR BE PERCEIVED TO PRECLUDE OR LIMIT,
8 ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL
9 ORDINANCE, LAW, RULE OR REGULATION.

10 2. NO student SHALL be subjected to discrimination based on a person's
11 actual or perceived race, color, weight, national origin, ethnic group,
12 religion, religious practice, disability, sexual orientation, gender, or
13 sex by school employees or students on school property or at a school
14 function. Nothing in this subdivision shall be construed to prohibit a
15 denial of admission into, or exclusion from, a course of instruction
16 based on a person's gender that would be permissible under section thir-
17 ty-two hundred one-a or paragraph (a) of subdivision two of section
18 twenty-eight hundred fifty-four of this chapter and title IX of the
19 Education Amendments of 1972 (20 U.S.C. section 1681, et. seq.), or to
20 prohibit, as discrimination based on disability, actions that would be
21 permissible under section 504 of the Rehabilitation Act of 1973.

22 [2. An age-appropriate version of the policy outlined in subdivision
23 one of this section, written in plain-language, shall be included in the
24 code of conduct adopted by boards of education and the trustees or sole
25 trustee pursuant to section twenty-eight hundred one of this chapter and
26 a summary of such policy shall be included in any summaries required by
27 such section twenty-eight hundred one.]

28 S 8. Sections 13, 14, 15 and 16 of the education law, as added by
29 chapter 482 of the laws of 2010, are amended to read as follows:

30 S 13. Policies and guidelines. The board of education and the trustees
31 or sole trustee of every school district shall create policies and
32 guidelines that shall include, but not be limited to:

33 1. Policies intended to create a school environment that is free from
34 discrimination or [harassment] BULLYING; AND

35 2. Guidelines to be used in school training programs to discourage the
36 development of discrimination or [harassment] BULLYING and that are
37 designed:

38 a. to raise the awareness and sensitivity of school employees to
39 potential discrimination or [harassment] BULLYING, and

40 b. to enable employees to prevent and respond to discrimination or
41 [harassment; and

42 3. Guidelines relating to the development of nondiscriminatory
43 instructional and counseling methods, and requiring that at least one
44 staff member at every school be thoroughly trained to handle human
45 relations in the areas of race, color, weight, national origin, ethnic
46 group, religion, religious practice, disability, sexual orientation,
47 gender, and sex] BULLYING.

48 S 14. Commissioner's responsibilities. The commissioner shall:

49 1. Provide direction, which may include development of model policies
50 and, to the extent possible, direct services, to school districts
51 related to preventing discrimination and [harassment] BULLYING and to
52 fostering an environment in every school where all children can learn
53 free of manifestations of bias;

54 2. Provide grants, from funds appropriated for such purpose, to local
55 school districts to assist them in implementing the guidelines set forth
56 in this section; and

1 3. Promulgate regulations to assist school districts in implementing
2 this article including, but not limited to, regulations to assist school
3 districts in developing measured, balanced, and age-appropriate
4 responses to violations of this policy, with remedies and procedures
5 focusing on intervention and education.

6 4. THE COMMISSIONER SHALL PRESCRIBE REGULATIONS REQUIRING THAT ALL
7 PERSONS APPLYING ON OR AFTER SEPTEMBER SECOND, TWO THOUSAND TWELVE FOR A
8 TEACHING CERTIFICATE OR LICENSE, INCLUDING BUT NOT LIMITED TO A CERTIF-
9 ICATE OR LICENSE VALID FOR SERVICE AS A CLASSROOM TEACHER, SCHOOL ADMIN-
10 ISTRATOR OR SUPERVISOR OR SUPERINTENDENT OF SCHOOLS, SHALL, IN ADDITION
11 TO ALL OTHER CERTIFICATION OR LICENSING REQUIREMENTS, HAVE COMPLETED
12 TRAINING IN THE IDENTIFICATION AND MITIGATION OF BULLYING IN AREAS
13 INCLUDING BUT NOT LIMITED TO RACE, COLOR, WEIGHT, NATIONAL ORIGIN,
14 ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIEN-
15 TATION, GENDER AND SEX.

16 S 15. Reporting by commissioner. The commissioner shall create a
17 procedure under which material incidents of discrimination and [harass-
18 ment] BULLYING on school [grounds or at a school function] PROPERTY, AS
19 SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAP-
20 TER, are reported to the department at least on an annual basis. Such
21 procedure shall provide that such reports shall, wherever possible, also
22 delineate the specific nature of such incidents of discrimination or
23 [harassment] BULLYING, provided that the commissioner may comply with
24 the requirements of this section through use of the existing uniform
25 violent incident reporting system. In addition the department may
26 conduct research or undertake studies to determine compliance throughout
27 the state with the provisions of this article.

28 S 16. Protection of people who report discrimination or [harassment]
29 BULLYING. Any person having reasonable cause to suspect that a student
30 has been subjected to discrimination or [harassment] BULLYING by an
31 employee or student, on school [grounds or at a school function,] PROP-
32 ERTY, AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF
33 THIS CHAPTER, who, acting reasonably and in good faith, either reports
34 such information to school officials, to the commissioner, or to law
35 enforcement authorities or otherwise initiates, testifies, participates
36 or assists in any formal or informal proceedings under this article,
37 shall have immunity from any civil liability that may arise from the
38 making of such report or from initiating, testifying, participating or
39 assisting in such formal or informal proceedings, and no school district
40 or employee shall take, request or cause a retaliatory action against
41 any such person who, acting reasonably and in good faith, either makes
42 such a report or initiates, testifies, participates or assists in such
43 formal or informal proceedings.

44 S 9. This act shall take effect on the same date and in the same
45 manner as chapter 482 of the laws of 2010, takes effect.